

Entered 1/10/2012

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

v.

62.93 ACRES ADDRESSED AT 745
GOVERNOR LEA ROAD, etc.

Defendant.

CIVIL ACTION NO. 07-597 GMS

STIPULATION AND ORDER OF SETTLEMENT

This Stipulation and Order of Settlement, effective as of the date of entry, is entered into by and among the following parties (the "Settling Parties"): United States of America ("United States"), Plaintiff; and New Castle County, Delaware ("New Castle County"), Intervenor.

RECITALS

WHEREAS, on September 27, 2007, the United States, on behalf of the EPA, commenced a civil action in the United States District Court for the District of Delaware, Docket Number 07-CV-597-GMS, against 62.93 Acres addressed at 745 Governor Lea Road and 0 Governor Lea Road, Delaware City, New Castle County, Delaware ("Defendant", "Property", or "Site");

WHEREAS, the Property is comprised of six tax parcels identified in New Castle County records as 12-003.00-002, 12-003.00-010, 12-003.00-011, 12-003.00-012, 12-003.00-013, and 12-003.00-017.

WHEREAS, the United States alleged that EPA had incurred response costs in excess of sixty-four million dollars (\$64,000,000.00) in connection with its response actions at the Site to remediate chlorobenzene contamination;

WHEREAS, the United States continues to remediate the Site and asserts that it will incur additional response costs;

WHEREAS, the United States asserts that pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), the United States possesses a lien upon the Property which is superior to all other liens;

WHEREAS, the United States seeks, among other things, a judgment for all response costs incurred and to be incurred in connection with the Property;

WHEREAS, on November 13, 2007, New Castle County filed a Motion to Intervene in the United States' civil action, Docket Number 07-CV-597-GMS;

WHEREAS, New Castle County alleged that it is owed more than \$550,000 in unpaid property and school tax obligations in connection with the Property;

WHEREAS, New Castle County asserts that it possesses statutory and judgment liens upon the Property which are superior to all other liens;

WHEREAS, New Castle County seeks a judgment for all taxes owed in connection with the Property;

WHEREAS, the Settling Parties have each determined, individually, that it is in their interest to resolve their competing claims regarding priority of their respective liens in connection with the Property through settlement rather than through litigation;

WHEREAS, the Settling Parties agree that settlement of the United States' claims against the Property, and New Castle County's claims in intervention, without further litigation, is in the public interest;

WHEREAS, the Settling Parties further agree that the Court's approval of this Stipulation is an appropriate means of resolving the claims in this action.

NOW THEREFORE, in consideration of the foregoing, before the taking of any testimony, without adjudication or admission of any issue of fact or law, except as provided in Paragraphs 1 and 2, below, and with the consent of the Settling Parties set forth below, which the Settling Parties agree is full and sufficient, the Settling Parties stipulate and agree as follows:

1. This Court has jurisdiction over the Settling Parties, the Property, and the subject matter of this action pursuant to Sections 107(a), 107(l), and 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9607(a), 9607(l), and 9613(b), and 28 U.S.C. §§1331 and 1345. The Court also has jurisdiction over this *in rem* action pursuant to Federal Rule of Civil Procedure 4(u). Venue is proper in this district under Sections 107(l)(4) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(l)(4) and 9613(b), and 28 U.S.C. §1391(b).

2. On November 30, 2011, default was properly entered against the Defendant Property by the Clerk of this Court in accordance with Federal Rule of Civil Procedure 55(a).

SETTLEMENT TERMS

3. Upon request of the Settling Parties jointly, or of either Settling Party individually, the Court shall order the Property sold by judicial sale following the procedures set forth in 28 U.S.C. §2002.

4. Neither Settling Party may individually request such an order for judicial sale without providing a minimum of 30 days notice, prior to making the request, to the other Settling Party as provided in Paragraph 8 (Notice).

5. Any and all monetary proceeds resulting from the judicially ordered sale of the Property, or of any parcel or parcels contained within the Property, shall be split equally between the Settling Parties. It is the unambiguous intent of the Settling Parties that the United States shall receive half of the proceeds, and New Castle County shall receive half of the proceeds, resulting from the sale of the Property as a whole or of any portion thereof. To the extent the Property is sold in parcels comprising less than the entire Property, it is the unambiguous intent of the Settling Parties that all monetary proceeds from the sale of each and every parcel comprising less than the entire Property shall be split equally between the Settling Parties until the entire Property has been sold.

GENERAL TERMS

6. Amendments. This Stipulation may be amended only by agreement of the Settling Parties in writing.

7. Third- Party Beneficiaries. This Stipulation is not intended to be binding on and does not inure to the benefit of any entities other than the Settling Parties.

8. Notice. All notices and other communications with a Settling Party shall be sent via overnight express delivery or first-class mail to the following:

For the United States:

Chief, Environmental Enforcement Section
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

and,

Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

For New Castle County:

Laura T. Hay (#4715)
Sr. Assistant County Attorney
New Castle County Office of Law
87 Reads Way New Castle, DE 19720

9. Entire Agreement. This Stipulation constitutes the entire understanding of the Settling Parties with respect to its subject matter and merges and supersedes all prior discussions, agreements and understandings of every kind and nature between them, and no Settling Party shall be bound by any condition other than as expressly provided for in this Stipulation.

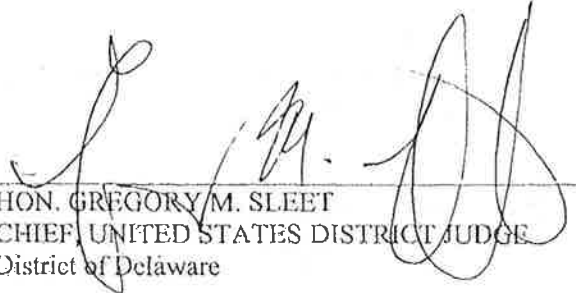
10. Execution in Counterparts. This Stipulation may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute one agreement.

11. Authority. The undersigned representatives of the Settling Parties and their respective designees each certify that he or she is fully authorized to enter into this Stipulation and to enter into the terms and conditions of this Stipulated Settlement, and to execute and legally bind the United States and New Castle County, respectively, to those terms and conditions.

12. This Court shall retain jurisdiction for the purpose of enforcing this Stipulation and Order of Settlement.

Judgment is hereby ENTERED in accordance with the foregoing Stipulation and Order this

10th day of Jan, 2012




HON. GREGORY M. SLEET
CHIEF, UNITED STATES DISTRICT JUDGE
District of Delaware

FOR PLAINTIFF UNITED STATES OF AMERICA:


IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

DATE: 9 DECEMBER 2011


Joshua H. Van Eaton
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Phone: (202) 514-5474
Email: josh.van.eaton@usdoj.gov

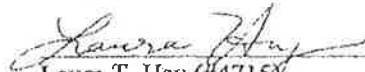
CHARLES M. OBERLY, III
United States Attorney

DATE: 14 Dec. 2011


Shannon T. Hanson
Assistant United States Attorney
Delaware Bar I.D. No. 3953
The Nemours Building
1007 Orange Street, Suite 700
P. O. Box 2046
Wilmington, DE 19899-2046
(302) 573-6277
Shannon.Hanson@usdoj.gov

FOR INTERVENOR NEW CASTLE COUNTY:

DATE December 6, 2011



Laura T. Hay (#4715)
Sr. Assistant County Attorney
New Castle County Office of Law
87 Reads Way New Castle, DE 19720
Phone (302)395-5130
Email: Lhay@nccde.org